

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Petition for	) Application No. NG-0019
Declaratory Ruling of Metropolitan	)
Utilities District of Omaha (MUD)	)
seeking a determination that <u>Neb.</u>	)
<u>Rev. Stat.</u> §§ 57-1302 through 57-	)
1307 and <u>Neb. Rev. Stat.</u> § 66-1849	)
and Neb. Admin. Code, Title 291,	) ORDER DENYING MOTION
Chapter 9 Sections 003.01 through	) FOR REHEARING
003.11 and Section 009.01 do not	)
apply to a natural gas supply and	)
transportation arrangement between	)
M.U.D. and Nebraska Public Power	)
District (NPPD).	) Entered: June 8, 2004

BY THE COMMISSION:

On February 23, 2004, a petition for declaratory ruling was filed by Metropolitan Utilities District of Omaha (MUD) seeking a determination as to whether Neb. Rev. Stat. §§ 57-1302 through 57-1307 and Neb. Rev. Stat. § 66-1849 and Neb. Admin. Code, Title 291, Chapter 9 Sections 003.01 through 003.11 and Section 009.01 apply to a natural gas supply and transportation arrangement between MUD and Nebraska Public Power District (NPPD).

On February 26, 2004, notice of the filing of the above captioned application was published in The Daily Record. NPPD filed a Petition of Informal Intervention on March 15, 2004. The National Public Gas Agency (NPGA) filed a Petition for Formal Intervention on March 26, 2004. Cornerstone Energy, Inc. (Cornerstone) and Aquila, Inc. (Aquila) both filed petitions to formally intervene and protests on March 29, 2004.

A hearing on this matter took place on March 31, 2004. The parties then submitted post-hearing briefs. On May 11, 2004, the Commission entered its order finding that the above-mentioned statutes and regulations applied to the service proposed by MUD.

Also on May 11, 2004, the Honorable Steven D. Burns of the District Court of Lancaster County entered an order on MUD's appeal of Application No. NG-0008. Although Judge Burns affirmed the Commission's dismissal of MUD's application, he held that the dismissal was appropriate because the Commission lacked jurisdiction to consider MUD's application for a certificate to operate as a competitive natural gas provider. On May 27, 2004, the Commission filed an appeal of Judge Burns' decision on the jurisdictional question.

MUD subsequently filed a Motion for Rehearing with respect to Application No. NG-0019 on May 20, 2004, and requested oral argument. Oral argument was scheduled for June 1, 2004, at 2:00 p.m. Notice was provided to all interested parties via email on May 21, 2004. Further notice was provided to all interested parties via first class mail on May 26, 2004.

#### O P I N I O N     A N D     F I N D I N G S

As previously stated, the Commission has appealed Judge Burns' decision in Application No. NG-0008 to the extent that he found that the Commission lacked jurisdiction to consider MUD's application for a certificate of authority to operate as a competitive natural gas provider. The Commission maintains that pursuant to Neb. Rev. Stat. § 66-1849 (2003 Supp.), it has jurisdiction to certify all who fall within the definition of competitive natural gas providers set forth in Neb. Rev. Stat. §§ 66-1848(2)(a) (2003 Supp.). Consistent with its appeal of the District Court's order in Application No. NG-0008, the Commission finds that the motion for rehearing of Application No. NG-0019 should be denied.

MUD, supported by NPGA, continues to assert that it is not required to obtain a certificate of authority under the State Natural Gas Regulation Act (Act) to provide natural gas to the plant as it is not a "competitive natural gas provider" for purposes of Neb. Rev. Stat. § 66-1849 because NPPD is not a "retail end user" and MUD will be providing natural gas to the plant through pipe it owns. MUD and NPGA further contend that NPPD's status as a high-volume ratepayer further exempts MUD from regulation.

These issues were previously addressed in the Commission's May 11, 2004 order and the parties presented no new evidence that would justify a rehearing. For the sake of brevity, portions of the order addressing these issues are incorporated herein by reference.

The Commission being fully advised of the circumstances hereby finds that the Motion for Rehearing should be denied.

O R D E R

IT IS THEREFORE ORDERED by the Commission in the above-captioned matter that MUD's Motion for Rehearing is denied.

MADE AND ENTERED at Lincoln, Nebraska, this 8th day of June, 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director